

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

PATRICIA I. CASAS,

Plaintiff,

vs.

MIDLAND CREDIT MANAGEMENT,
INC., a corporation; and DOES 1 through 10,
inclusive,

Defendants.

Case No. 07cv1124 LAB (NLS)

**ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFF'S
MOTION FOR PARTIAL
SUMMARY JUDGMENT**

Plaintiff Patricia I. Casas has commenced this action against Defendants Midland Credit Management, Inc. and Does 1 through 10, alleging violations of the Fair Debt Collection Practices Act (the "FDCPA"), 15 U.S.C. § 1692 *et seq.*, and the California Rosenthal Act, CAL. CIV. CODE § 1788 *et seq.* Casas now moves for partial summary judgment on her liability claims. (Dkt. No. 17 (June 19, 2008).) For the reasons set forth below, her motion is granted in part and denied in part.

BACKGROUND

This action arises from Midland's efforts to collect from Casas approximately \$1,100.00 she allegedly incurred on an Aspire Visa account. Between May and October 2006, Midland and Casas exchanged eight letters – five from Midland and three from Casas. Casas claims that Midland sent her dunning letters in violation of the FDCPA and the Rosenthal Act. But Midland argues that its letters constitute legitimate efforts to seek repayment from Casas and to respond to her requests for information. To analyze these competing arguments, a discussion of the eight letters is in order.

1 **I. The Letters Between Midland and Casas**

2 Midland mailed its first letter to Casas on May 5, 2006. (Declaration of Patricia I. Casas
 3 ("Casas Decl.") Ex. A.) In that letter, Midland informed Casas that it purchased her Aspire Visa
 4 account and offered to settle for a payment of 90% of the \$1,037.18 balance. (*Id.*) Casas responded
 5 in writing on May 18, 2006, denying that she had an Aspire Visa account. (Casas Decl., Ex. B.) She
 6 requested that Midland confirm in writing that it made no negative credit reporting about her. (*Id.*)

7 In a May 26, 2006 letter responding to Casas' request, Midland stated that it notified credit
 8 reporting agencies that she had denied owing the underlying debt. (Casas Decl., Ex. C.) Midland also
 9 asked Casas to provide further information to support her denial. (*Id.*) On June 6, 2006, Casas
 10 provided Midland with her previous addresses and maiden name, and requested "a copy of the
 11 application to [Aspire Visa] showing [her] signature." (Casas Decl., Ex. D.)

12 Midland, however, did not meet Casas' request in its next letter, dated June 23, 2006. Instead,
 13 Midland attached an account statement to that letter. (Casas Decl., Ex. E.) Midland also warned that
 14 it was "considering forwarding [the] account to an attorney . . . to initiate legal action to satisfy the
 15 debt." *Id.* On July 10, 2006, Casas responded with her own warning that she would sue Midland if
 16 it damaged her credit rating. (Casas Decl., Ex. F.)

17 In an attempt to satisfy Casas' request, Midland sent Casas a three-page statement on July 15,
 18 2006 identifying all the transactions of the purported Aspire Visa account. (Casas Decl., Ex. G.)
 19 Midland again demanded payment of the balance. (*Id.*) After receiving no response from Casas for
 20 nearly three months, Midland sent its fifth letter to Casas on October 5, 2006. (Casas Decl., Ex. H.)
 21 In that letter, Midland offered to settle the dispute for Casas' payment of 75% of the balance. (*Id.*)
 22 Midland again stated that it was "considering forwarding the . . . account to an attorney," but assured
 23 that it had made "no decision to forward [the] account . . . at this time." (*Id.*)

24 In addition to sending the five letters, Midland reported Casas' account to a credit reporting
 25 agency with the remark "[a]ccount information disputed by consumer." (Casas Decl., Ex. I.) Making
 26 good on her warning, Casas commenced this action.

27 ///

28 ///

II. Casas' Partial Summary Judgment Motion

Casas claims that Midland's last four letters violated the FDCPA and in turn, the Rosenthal Act, which incorporates the FDCPA. Dkt. No. 17-2 (June 19, 2008); *see also* CAL CIV. CODE § 1788.17 . In her view, Midland should have stopped its collection efforts because she disputed the underlying debt in writing. (Dkt. No. 17-2 at 6.) Moving for partial summary judgment, Casas argues that Midland failed to properly investigate her dispute and as a result, violated five FDCPA provisions, including § 1692c's prohibition against communication with disputing debtors and § 1692g's requirement to verify debts. (*Id.* at 6–8.) She also argues that Midland cannot assert a *bona fide* error defense provided in 15 U.S.C. § 1692k(c). (*Id.* at 9–10.)

At the November 5, 2008 hearing on the motion, Midland admitted that it would not rely on the *bona fide* error defense. Both at the hearing and in its opposition papers, Midland argued that the evidence demonstrated that its investigation was proper. To support its argument, Midland submitted a declaration from its employee, Melissa Allen. Allen states that when a customer disputes a debt, Midland seeks information from the seller of the disputed account. (Declaration of Melissa Allen (“Allen Decl.”) ¶ 3.) She admits that Midland “rarely, if ever, contacts the original creditor.” (*Id.*) She does not provide any information regarding Midland’s investigation on Casas’ account.

Nor do the deposition transcripts shed any light on Midland’s investigation. On this motion, both Midland and Casas rely on the deposition testimony of Angelique Purvis, whom Midland designated to testify on its behalf under Federal Rule of Civil Procedure 30(b)(6). Purvis testified that she did not know whether Midland verified the information on Casas’ account. (Dkt. No. 19-4 at 2–4, 6.) She also testified that in response to Casas’ dispute, Midland sent the May 26, 2006 request for information and reviewed “the consumer documentation . . . [and] account notes.” (*Id.* at 16.) She admitted that Midland did nothing else to investigate Casas’ dispute. (*Id.* at 14–16.)

DISCUSSION

I. Summary Judgment Standard

Summary judgment is appropriate where “there is no genuine issue as to any material fact and . . . the moving party is entitled to judgment as a matter of law.” FED. R. CIV. P. 56(c). As the moving party, Casas has the burden to demonstrate the absence of a factual issue for trial. *Celotex Corp. v.*

1 *Catrett*, 477 U.S. 317, 323 (1986). To meet this burden, she may show that Midland lacks evidence
 2 to support its case. *Id.* at 325. If she makes this showing, Midland must go beyond the pleadings and
 3 set forth “specific facts” to show a genuine issue for trial. *Id.* at 324.

4 On this motion, the Court considers the record as a whole and draws all reasonable inferences
 5 in the light most favorable to Midland. *Fairbank v. Wunderman Cato Johnson*, 212 F.3d 528, 531 (9th
 6 Cir. 2000). In considering the record, the Court may not make credibility determinations or weigh
 7 conflicting evidence. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). Rather, the Court
 8 determines whether the record “presents a sufficient disagreement to require submission to a jury or
 9 whether it is so one-sided that one party must prevail as a matter of law.” *Id.* at 251–52. Not all
 10 alleged factual disputes will serve to forestall summary judgment; such disputes must be both material
 11 and genuine. *Id.* at 247–49.

12 **II. Midland’s Liability Under 15 U.S.C. §§ 1692c and 1692g**

13 The FDCPA imposes strict liability on debt collectors, with the *bona fide* error defense as a
 14 “narrow exception.” *Clark v. Capital Credit & Collection Servs., Inc.*, 460 F.3d 1162, 1177 (9th Cir.
 15 2006). Here, the record demonstrates that Midland took two steps in investigating Casas’ dispute: (1)
 16 sending Casas the May 26, 2006 letter requesting that she provide further information; and (2)
 17 reviewing “the consumer documentation . . . [and] account notes.” (Dkt. No. 19-4 at 16.) Purvis,
 18 Midland’s Rule 30(b)(6) witness, testified that Midland did nothing else to respond to Casas’ dispute.
 19 (Dkt. No. 19-4 at 14–16.) No evidence shows that Midland made any effort to comply with Casas’
 20 request for a copy of the application for the purported Aspire Visa account. Nor does the evidence
 21 show that Midland verified Casas’ account. (Dkt. No. 19-4 at 2–4, 6; *see also* Allen Decl. ¶ 3.)

22 The evidence demonstrates that Midland violated § 1692c and § 1692g. Under § 1692c,
 23 Midland is prohibited from communicating with Casas once she “notifies . . . in writing that [she]
 24 refuses to pay” the alleged debt. 15 U.S.C. § 1692c(c). Midland’s argument that Casas’ May 18, 2006
 25 letter does not constitute a written notice of refusal to pay fails as a matter of law because the letter
 26 makes clear she has no intention of paying and wants the debt cleared from her record:

27 ///

28 ///

1 I have never had a Visa with Aspire Visa, I dispute the validity of this debt. This
 2 debt doesn't belong to me, please check your records to find the right person. I hope
 3 my credit report has not been altered by your company otherwise, I'll need to take
 legal actions.

4 I need you to provide me within 2 weeks a letter of verification that my credit report
 is clear regarding this matter.

5 As a result, Midland violated § 1692c by sending additional demand letters to Casas. *See Clark*, 460
 6 F.3d at 1177 (imposing strict liability on debt collectors). Moreover, § 1692g requires Midland to
 7 cease collection until it "obtains verification of the debt." 15 U.S.C. § 1692g(b).

8 Midland contends Casas actually requested further communication, which is partially true.
 9 Casas did ask Midland to send a letter verifying that the charge had been removed from her credit
 10 report (Casas Decl., Ex. B.) In reply, Midland asked her to send "canceled checks, paid letters, police
 11 reports, or any other documentation you may have to support your claim . . ." (*Id.*, Ex. C.) Casas sent
 12 Midland her current address (for the past five years) and her previous address (for the previous seven
 13 years) as well as her full maiden name, adding "[i]f your agency is not satisfied with the information
 14 I provided you with, I will strongly request your agency to provide me with a copy of the application
 15 to ASPIRE VISA showing my signature." (*Id.*, Ex. D.) Midland contends this request amounts to an
 16 invitation to send its letter of June 23, 2006. (Dkt. No. 22 at 8:5–7.) Midland characterizes this letter
 17 as a request "to provide the additional account details . . ." (*Id.* at 8:6–7.) This grossly misrepresents
 18 the June 23 letter, which contains no request for additional account details and instead repeatedly
 19 demands immediate payment and threatens legal action. (Casas Decl., Ex. E at 1–2.) The
 20 uncontested evidence shows Casas did not ask Midland to send such a letter and in fact made clear
 21 she expected Midland to cease its collection attempts.

22 Midland attempts to characterize this as a case of identity theft, (Dkt. No. 22 at 8:26–9:1),
 23 which it was not; Casas' contention in her correspondence with Midland was merely that the account
 24 was not hers. The only available information suggests Casas believed Midland had confused her with
 25 the actual account holder. (Mayers Decl. at 17:2–25 (Purvis Depo. Tr. page 46, discussing record of
 26 Casas' husband calling to say Midland was contacting the wrong person).)

27 Midland unreasonably attempts to fault Casas for failing to provide all possible information.
 28 For instance, Midland argues that its letter of July 15, 2006 should have prompted Casas to say she

1 had never been to Texas and had never made any charges to a company in Texas. (Dkt. No. 22 at
 2 8:1–5.) This is irrelevant for several reasons. First, Midland had already violated the FDCPA by the
 3 time it sent this letter. Second, Plaintiff had already told Midland she lived in California for the last
 4 twelve years and the account was not hers, which Midland rejected out of hand. There would have
 5 been little point in Casas telling Midland the charges, made in Texas during October and November
 6 of 2004, were not hers. (*See Casas Decl., Ex. G (Transaction History).*)

7 Midland cites Casas' Exhibit I as evidence Casas provided an address on Monterey Avenue,
 8 which conflicted with the two previous addresses she provided to Midland. (Mayers Decl. in Supp.
 9 of Opp'n to Mot. for Summ. J., ¶ 5.) Exhibit I, however, is a single page from a credit report showing
 10 Midland had reported Casas as having a debt in collection; none of Casas' reported addresses are
 11 shown. Furthermore, even if the entire credit report were in evidence and attested to by a competent
 12 witness, and showed a reported address on a Monterey Avenue, this would not mean Casas was lying
 13 about her two previous addresses. Rather, it would merely mean someone reported that as Casas'
 14 address.

15 Midland also finds fault with Casas for failing to anticipate and submit the information it
 16 claims it would have needed to verify the account was not hers, such as a social security number,
 17 driver's license, or passport. (Dkt. No. 22 at 10:11–13.) Midland, however, asked for different
 18 information, (Casas Decl., Ex. C), and Casas had no reason to send such documents spontaneously.

19 Casas' uncontested evidence shows she was not the account holder and did not owe the
 20 debt. (Casas Decl., ¶ 11.) Had Midland attempted to verify the debt, it undoubtedly would have
 21 discovered information showing whether what Casas said was true; in particular, Midland made no
 22 effort to obtain the original credit application bearing the signature of the credit applicant as Casas
 23 requested. The evidence shows Midland's effort consisted of sending letters to Casas, reviewing
 24 information Casas sent, reviewing account notes, and obtaining a transaction history from Aspire Visa
 25 (Ex. G to the Casas Decl.), which it sent to Casas. (Mayers Decl., Ex. 1 at 16:5–17:1, 21:19–22:16
 26 (pages 45–46, 95–96 of Purvis Depo. Tr.); *see also* Opp'n to Mot. for Summ. J. at 6:19–22
 27 (acknowledging Midland sent Casas all documents it received from Aspire Visa).) Midland presents
 28 evidence it routinely contacts the seller of the debt and sometimes the original creditor (Allen Decl.,

1 ¶ 5), but it obtained no additional information by doing so in this case. (*See Opp'n to Mot. for Summ.*
 2 J. at 6:7–9 (acknowledging no letter was sent to the seller of the debt or to the original creditor)). The
 3 transaction records in Exhibit G are unremarkable; they do not show any identifying details of the
 4 Patricia Casas whose account it was. In any event they were sent to Casas after the first FDCPA
 5 violation had already taken place.

6 In short, the uncontested evidence shows Midland made no real effort to verify the debt
 7 before continuing with its collection efforts. Midland's course of action consisted of nothing more
 8 than telling Casas to provide information showing the debt was not hers, disbelieving her information
 9 for no clear reason, and insisting on immediate payment. Because the evidence shows that Midland
 10 failed to take any meaningful steps to verify Casas' disputed account, Midland is liable for violating
 11 § 1692g. *Cf. Clark*, 460 F.3d at 1174 (denying summary judgment on the debtor's § 1692g claim
 12 because "upon [the debtor's] request for verification, [the debt collector] obtained information from
 13 [the original creditor] about the nature and balance of the outstanding bill").

14 In opposition to Casas' motion, Midland fails to cite any applicable authority. Arguing that
 15 it did not violate § 1692c, Midland relies on two district court decisions: *Trull v. GC Services Limited*
Partnership, 961 F. Supp. 1199 (N.D. Ill. 1997); and *Rabideau v. Management Adjustment Bureau*,
 17 805 F. Supp. 1086 (W.D.N.Y. 1992). *Trull* and *Rabideau*, however, do not address § 1692c violations.
 18 Thus, Midland's reliance on these cases is misplaced.

19 In summary, Casas has met her burden to eliminate issues of fact regarding her claims under
 20 § 1692c and § 1692g. Midland fails to set forth "specific facts" to show a genuine issue for trial.
 21 *Celotex Corp.*, 477 U.S. at 324. Accordingly, Casas' motion for partial summary judgment is
 22 **GRANTED** with respect to her claims under § 1692c and § 1692g. Because Casas fails to set forth
 23 sufficient factual and legal basis for her claims under other FDCPA provisions, her motion is **DENIED**
 24 with respect to those claims.

25 ///

26 ///

27 ///

28 ///

1 **III. Other Issues**

2 **A. Casas' Request to Disregard Allen's Declaration**

3 In her reply brief, Casas requests that the Court disregard Allen's declaration as a sanction for
 4 Midland's failure to designate a witness with sufficient knowledge in compliance with Rule 30(b)(6).
 5 The Court declines to do so for two reasons.

6 First, Casas has not established that Midland's designation of Purvis as a corporate witness
 7 violated Rule 30(b)(6). Although she points to Purvis' lack of knowledge on certain topics, such as
 8 the purchasing process, the record demonstrates that Purvis was knowledgeable regarding Midland's
 9 practices and the underlying transactions. (*See, e.g.*, Dkt. No. 23 at 7–9.) Thus, Purvis' failure to
 10 answer some questions does not disqualify her from testifying on Midland's behalf under Rule
 11 30(b)(6). *Alexander v. F.B.I.*, 186 F.R.D. 137, 141 (D.D.C. 1998) (Lamberth, J.) (denying a motion
 12 to re-designate a Rule 30(b)(6) witness despite the witness' inability to answer some questions).

13 Second, Allen's declaration does not contradict Purvis' testimony. This case is therefore
 14 distinguishable from the authority Casas cites in which parties were precluded from using affidavits
 15 that contradicted their employees' testimony. *See, e.g., Hyde v. Stanley Tools*, 107 F. Supp. 2d 992,
 16 993 (E.D. La. 2000) (Barbier, J.). Accordingly, Casas' request to disregard Allen's declaration is
 17 **DENIED**.

18 **B. Midland's Request for Entry of Summary Judgment**

19 In its opposition, Midland requests that the Court enter summary judgment in its favor. This
 20 request suffers from both procedural and substantive defects. In terms of procedure, the request is
 21 improper because Casas has no opportunity to respond. *See Kassbaum v. Steppenwolf Prods., Inc.*,
 22 236 F.3d 487, 495 (9th Cir. 2000) (declining to enter summary judgment to non-movant). In terms
 23 of substance, Midland fails to submit any evidence to support its request. As a result, Midland's
 24 request for entry of summary judgment is **DENIED**.

25 ///

26 ///

27 ///

28 ///

CONCLUSION AND ORDER

For the reasons set forth above, Casas' motion for partial summary judgment is **GRANTED** with respect to her claims under 15 U.S.C. §§ 1692c and 1692g and the Rosenthal Act, and **DENIED** with respect to her remaining claims.

IT IS SO ORDERED.

DATED: January 29, 2009

Larry A. Bunn

HONORABLE LARRY ALAN BURNS
United States District Judge